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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,463	12/21/2001	D. Theron Van Hooser	BAL-107 (17456)	4814
22827	7590	11/30/2005	EXAMINER	
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			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/037,463	<b>Applicant(s)</b> HOOSER, D. THERON VAN	
	<b>Examiner</b> Nihir Patel	<b>Art Unit</b> 3743	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on September 28<sup>th</sup>, 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.  
4a) Of the above claim(s) 14 and 26 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28 is/are allowed.
- 6) ☒ Claim(s) 1-13, 16-22, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 15, 23 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09.12.2005</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Allowable Subject Matter***

Claim 28 is allowed.

Claims 15, 23 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonnell (US 4,863,133) in view of Wilcox (US 6,697,710). **Referring to claims 1 and 11,** Bonnell discloses the applicant's invention as claimed with the exception of providing at least one inflatable bladder operably disposed at a point of connection between at least two of the arm segments, wherein upon inflation of the bladder the arm segments are locked into position with respect to one another and upon deflation the arm segments are released and positionable with respect to one another. Wilcox discloses an apparatus that does provide at least one inflatable bladder operably disposed at a point of connection between at least two of the arm segments, wherein upon inflation of the bladder the arm segments are locked into position with respect to one another and upon deflation the arm segments are released and positionable with respect to one another (see column 2 lines 50-65). Therefore it would have been obvious to modify

Bonnell invention by providing at least one inflatable bladder operably disposed at a point of connection between at least two of the arm segments, wherein upon inflation of the bladder the arm segments are locked into position with respect to one another and upon deflation the arm segments are released and positionable with respect to one another as taught by Wilcox in order to prevent movement and to provide better positioning.

**Referring to claim 2**, Bonnell discloses the applicant's invention as claimed with the exception of providing a bladder that is configured at a point of connection between all of the arm segments. Wilcox discloses an apparatus that does provide a bladder that is configured at a point of connection between all of the arm segments (see column 2 lines 50-65). Therefore it would have been obvious to modify Bonnell's invention by providing a bladder that is configured at a point of connection between all of the arm segments as taught by Wilcox in order to prevent movement and to provide better positioning.

**Referring to claim 5**, Bonnell discloses the applicant's invention as claimed with the exception of providing a bladder that traverses the points of connection between all of the arm segments. Wilcox discloses an apparatus that does provide a bladder that traverses the points of connection between all of the arm segments. Therefore it would have been obvious to modify Bonnell's invention by providing a bladder that traverses the points of connection between all of the arm segments as taught by Wilcox in order to prevent movement and to provide better positioning.

**Referring to claim 9**, Bonnell discloses the applicant's invention as claimed with the exception of providing an inflation of the bladder that hinders the adjustment between all of the arms segments, deflation of the bladder permits adjustment between all of the arm segments.

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Wilcox discloses an apparatus that does provide an inflation of the bladder that hinders the adjustment between all of the arms segments, deflation of the bladder permits adjustment between all of the arm segments (see column 2 lines 50-65). Therefore it would have been obvious to modify Bonnell's invention by providing an inflation of the bladder that hinders the adjustment between all of the arms segments, deflation of the bladder permits adjustment between all of the arm segments as taught by Wilcox in order to prevent movement and to provide better positioning.

**Referring to claim 12**, Bonnell discloses the applicant's invention as claimed with the exception of providing a respiratory support member that has at least two sections being movable with respect to one another, wherein inflation of the bladder urges against one of the sections and causes both sections to be fixed with respect to one another. Wilcox discloses an apparatus that does provide an apparatus wherein inflation of the bladder urges against one of the sections and causes both sections to be fixed with respect to one another. Therefore it would have been obvious to modify Bonnell's invention by providing wherein inflation of the bladder urges against one of the sections and causes both sections to be fixed with respect to one another as taught by Wilcox in order to prevent movement and to provide better positioning.

**Referring to claims 7, 20, 21 and 24**, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The intended use statements are not given any patentable weight in this instance  
**“adjustably mounted to a ventilator unit”**.

**Referring to claims 8 and 18**, the applicant claims that the control member be located on the arm segment and proximate to the respiratory support member. When reviewing the applicant's specification the examiner found no criticality on why the control member must be located on the arm segment and proximate to the respiratory support member and therefore came to a conclusion that the located on the arm segment and proximate to the respiratory support member is simply a matter of design choice as long as it inflates and deflates the bladder.

**Referring to claims 13 and 17**, the applicant claims that the support arm has three arm segments. When reviewing the applicant's specification the examiner found no criticality on why the support arm must have three arm segments and therefore came to a conclusion that it is simply a matter of design choice since it depends on the location and size of the patient.

Claims **3 and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonnell (US 4,863,133) in view of Carlson et al. (US 2002/0195535). **Referring to claims 3 and 4**, Bonnell discloses the applicant's invention as claimed with the exception of providing a bladder that is a tube that extends through all of the arm segments. Carlson discloses an apparatus that does provide a bladder that is a tube that extends through all of the arm segments. Therefore it would have been obvious to modify Bonnell's invention as claimed by providing a bladder that is a tube that extends through all of the arm segments as taught by Carlson in order to prevent movement and to provide better positioning.

Claim **6, 16, 19, 22 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonnell (US 4,863,133) in view of Wilcox (US 6,697,710) as applied to **claims 1, 2, 5, 9 and 12** above, and further in view of Kelly et al. (US 6,499,851). **Referring to claims 6, 16, 17, 19 and 22**, Bonnell and Wilcox discloses the applicant's invention as claimed with the exception

of providing at least one of the arm segments that has a flexible section. Kelly discloses a trailer back-up mirror that does provide at least one arm segment that has a flexible section. Therefore it would have been obvious to modify Bonnell's invention by providing at least one of the arm segments that has a flexible section as taught by Kelly in order to provide better positioning.

**Referring to claim 25,** Bonnell and Wilcox discloses the applicant's invention as claimed with the exception of providing a flexible section that is corrugated section of interconnected members. Kelly discloses a trailer back-up mirror that does provide a flexible section that is corrugated section of interconnected members. Therefore it would have been obvious to modify Bonnell's invention by providing a flexible section that is corrugated section of interconnected members as taught by Kelly in order to provide better positioning.

**Referring to claim 10,** The applicant claims that the arm segments are adjustable and the bladder is inflatable and deflatable by a user employing one hand. The applicant's specification has not established any criticality on why the arm segments are adjustable and the bladder is inflatable and deflatable by a user employing only one hand and therefore the examiner believes that it is a matter of design choice and the invention can adjusted and the bladder can be inflated or deflated by one or two hands or even by a control unit.

### ***Conclusion***

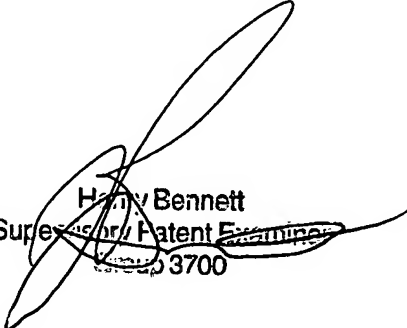
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nihir Patel  
November 28<sup>th</sup>, 2005

  
Henry Bennett  
Supervisor, Patent Examiner  
Art Unit 3700